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05/01/2006 08:02 PM

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366703

To Elise.Feldman@usdoj.gov, "Brooks, Patrick J."  
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cc Jason.Barbeau@usdoj.gov, Deanna.Chang@usdoj.gov,  
Maria Cintron-Silva/DC/USEPA/US@EPA, James  
Costello/R6/USEPA/US@EPA, Catherine  
bcc

Subject RE: Lease Comments

History: This message has been forwarded.

Elise-thanks very much for your comments regarding the draft Lease. We will make revisions as appropriate. You mentioned in our call earlier today that you would be forwarding comments regarding the draft Custodial Trust Agreement, although we have not received them as yet. I understand there may be others commenting as well. We would appreciate you forwarding any comments you may have by 11am tomorrow. We will further defer filing of the Plan Supplement until 2pm tomorrow to allow for consideration of comments received. Thanks.

-----Original Message-----

From: Elise.Feldman@usdoj.gov [mailto:Elise.Feldman@usdoj.gov]  
Sent: Monday, May 01, 2006 1:37 PM  
To: Brooks, Patrick J.; Winters, Karen  
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Subject: Lease Comments

Patrick,

Below are a number of comments from this office on the draft Lease. I have not heard from any of the States or from EPA and their comments may still be coming, but I wanted to get you our thoughts as quickly as possible.

1. Add as Miscellaneous provision: "Nothing herein shall release, nullify, or preclude any liability of Tenant to a governmental unit under police and regulatory laws to the extent that Tenant would be subject to liability as an operator of the Premises after the Commencement Date."
2. The Lease can be terminated before cleanup (including O&M) is complete, so the Plan needs to provide an alternative for funding after termination.
3. Section 3.5(a). The Oil Pollution Act should be added.

4. Sections 3.6 and 3.7, The Trust is given a right of access only with respect to Tenant's breaches and investigations thereof and to install monitoring equipment. The Trust (Landlord) needs a general right of access, which should include a right to access at all times to the Premises for the following purposes and activities:

a. Conducting investigations relating to  
Hazardous  
Substances at or near the Premises;

b. Obtaining samples;

c. Assessing the need for, planning, or  
implementing Remedial Action at or near the Premises;

5. Section 3.7. Further information is needed about the potential for repairs to property as a result of the remedial action and proof that such potential repairs are part of the Trust's budget. In the absence of such information, the last sentence of this section should be deleted.

6. Section 3.8, first sentence, add to end: or where 10 days notice is not feasible, reasonable advance notice to the extent practicable based on the need for Remedial Action and site conditions.

7. Section 11.11. The Trust will not have funding to pay the Lessee's attorney's fees. Therefore, it cannot agree to pay the Lessee's attorney's fees. Since the Trust will also not have funding for its own attorney's fees, this section should be rewritten to apply only to require payment of the Trust's fees in the event that it is the Prevailing Party.

Thank you. Look forward to speaking with you soon. Elise.